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IN THE SUPREME COURT STATE OF ARIZONA

In the Matter of PETITION)	
TO AMEND RULE[S])	Supreme Court
)	No. R-_____
17B A.R.S.)	
Rules Fam.Law Proc., Rule 35)	
)	
)	Petition to Amend
)	17B A.R.S.
)	Rules Fam.Law Proc., Rule 35

I. SUMMARY OF PROPOSED CHANGES

The proposed addition under rule 17B A.R.S. Rules Fam.Law Proc., Rule 35 would prohibit presentation of “oral motion(s)” from being advanced during hearings covered under 17B A.R.S. Rules Fam.Law Proc., Rule 24 (A) and would extend solely in matters in which a Respondent / Petitioner is not represented by council.

The State of Arizona in the form of the Petitioner, (Attorney General’s Office) is exclusively assigned to Petitioner during matters covered under (A.R.S. §§ 25-320 and 25-503). In these cases the Petitioner in the form of the Custodial Parent exclusively benefits from the presence of the Attorney General’s Office as the position of the Attorney General’s Office is to enforce “by all means available” child support. ARS 25-509(A).

This undermines the fundamental fairness of these proceedings as the vast majority of Respondent’s have no legal training and no means to defend or answer any “oral motion(s)” advanced by the Attorney General’s Office during these proceedings. This further circumvents protections for due process under 17B A.R.S. Rules Fam.Law Proc., Rule 24 (A), which grants a response and reply time frame for motion(s) presented to the court for consideration. fn1

fn1. State Judges, as well as federal, have the responsibility to respect and protect persons from violations of federal constitutional rights. Gross v. State of Illinois, 312 F 2d 257; (1963).

This is compounded by Judicial Officers who as a matter of course rely on the Attorney General's Office to act in a manner consistent with ethical standards, knowledge of the law and as officers of the court.

We find that under 17B A.R.S. Rules Fam.Law Proc., Rule 35 that there are no provisions for advancement of "oral motion(s)" in the procedural settings, and yet the Attorney General's Office exploits their standing with the court to advance "oral motion(s)" with the net results being grossly impactive on the Respondents rights to respond and often leads to the issuance of judgments and orders against the Respondent which are often impossible to challenge ex post facto.

By specific prohibition of these "oral motion(s)" during the course of the proceedings and meeting the requirements under 17B A.R.S. Rules Fam.Law Proc., Rule 35 for service (A) the Respondent(s) (unrepresented / unlicensed) would be afforded an opportunity to seek legal advice and respond prior to issuance of rulings and produce a fundamental fairness to the proceedings.

II. TEXT OF PROPOSED RULE CHANGE

Addition of:

17B A.R.S. Rules Fam.Law Proc., Rule 35 (E)

Oral Motion(s) prohibited.

The advancement of oral motion(s) in and for proceedings under (A.R.S. §§ 25-320 and 25-503) et. seq in which the opposing party is neither represented by council nor licensed to practice law is prohibited.

DATED this 21st day of February, 2007.
